

## TITLE 327 WATER POLLUTION CONTROL BOARD

### L.S.A. Document #02-327

#### SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On March 12, 2003, the water pollution control board (board) conducted the first public hearing/board meeting concerning the development of a new rule and amendments to rules concerning on-site residential sewage discharging disposal systems in Allen County. Comments were made by the following parties:

Gary Chapple, Fort Wayne-Allen County Department of Health (GC)

Sandra Flum, Allen County Commissioners Office (SF)

Glenn Pratt, Sierra Club (GP)

Loren Robertson, Fort Wayne-Allen County Department of Health (LR)

Rae Schnapp, Hoosier Environmental Council (HEC)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* Allen County has a problem with failing septic systems due to the soil type in the county. The county sought a legislative solution to the problem because it couldn't afford to have vacant homes or to turn people out of their homes if their septic systems failed. The new rule will only apply to a small percentage of the total septic systems in Allen County because the state law requires first trying to find a sewer solution. The required district is in the process of organizing. A small administrative fee will be collected from the participating homeowners at a rate that is not too harsh yet still allows the district to serve the function of cleaning up the water quality in the area and allowing the homeowners to stay in their homes. The district believes the monthly monitoring requirements in the draft rule are too financially burdensome for homeowners. The district requests the monitoring requirement be set at twice annually. (SF)

*Response:* IDEM understands the concerns raised and will continue to work with affected parties to forge a compromise on the monitoring requirements. It is important to balance cost with the public health concerns that may arise with less frequent monitoring.

*Comment:* Area realtors are anxious to have this rule in effect because failing septic systems and sewage on the ground adversely affect property marketability. Currently, between one and two hundred homes are on pump and haul orders to remove sewage from their septic tanks. Many of those homes were identified as potential candidates for on-site systems when the owner either tried to refinance or sell and could not get a mortgage on a home that didn't have a working septic system. (SF)

*Response:* IDEM is working as quickly as possible to pass this rule. However, the rule cannot be finalized until the district, required by SEA 461 is established since the district is a co-permittee in this rule.

*Comment:* Allen County Health Department predecessors left the county with many serious public health issues relating to water quality resulting from malfunctioning systems. A study three years ago by the health department judged that over ninety percent of the ditches in the county have E.coli levels that are unsafe for full body contact. This rule is necessary to prevent public health problems since nothing can be done presently to undo the decisions of past administrators. The increase of monitoring requirements that occurred since the draft rule was published for comment in the Indiana Register surprised the county health personnel who worked to develop this rule with IDEM. The county estimates that the monitoring requirements currently in the rule for the board's consideration of adoption will cost a homeowner over one hundred

seventy-five dollars (\$175) per month. This will be in addition to the installation cost of a very expensive treatment system. The county believes the expense to the homeowner for monitoring is excessive. This rule is needed to combat the West Nile Virus problem that has hard hit Allen County; therefore, it would benefit public health to make the rule requirements affordable to the homeowners. (LR)

*Response:* IDEM understands and is working to address the concerns raised about monitoring costs. IDEM is confident that the final rule will include monitoring requirements that represent an appropriate balance between the importance of verification that the systems are effective and meeting standards and are affordable. While it is difficult to rectify the mistakes of the past, it is important not to continue practices that would allow bacteria from the discharges of these types of systems to continue to be a problem. IDEM does not believe it is appropriate to continue to indicate that the spread of West Nile Virus is somehow tied to the contents of this rule. Effluent from a discharging system may also be a breeding ground for disease-carrying mosquitoes. IDEM will continue to work with all interested persons to recommend a final rule that is environmentally sound and economically reasonable. IDEM did provide Allen County information on the contents of the preliminarily adopted rule prior to presenting the rule to the Board and offered to meet with officials before that meeting.

*Comment:* It is expected that this rule will be used only as a solution to existing homes with failing septic systems and not for new home construction. The type home needing these on-site disposal systems is one that is on a very small lot with no additional area for locating another absorption field. The health department does not expect to approach the water board in the future to request applying this rule to new construction. (LR)

*Response:* IDEM agrees that this rule should not be available for new construction. Alternatives exist for new construction that should be pursued in lieu of ultimate reliance upon a discharging on-site wastewater treatment system.

*Comment:* The on-site disposal system is going to be very expensive for the homeowner so it is not going to be the first choice solution. The county is working with Purdue University to develop soil based solutions. There are, however, some sites where the soil just doesn't absorb water, and, for those sites, the discharging system is necessary. Given the great expense of installing a discharging system, the added burden of monthly monitoring may be too much for the homeowner. These systems are going to be used to replace failed ones that have created a water pollution impact. The rule requirements should facilitate the homeowner's ability to have these systems that will improve an existing water quality problem. The twice per year sampling requirement that was in the draft rule will help homeowners be able to correct the water pollution that has occurred from the failed septic systems. (GC)

*Response:* IDEM understands the concern about monitoring costs and will work to recommend a final rule that addresses these concerns. However, these systems have not been used heretofore in this state; therefore, it is difficult to determine appropriate monitoring frequencies to assure compliance with water quality standards. Because this rule constitutes a NPDES permit, any discharge from a permitted source must meet water quality standards.

*Comment:* The county would not have a problem with monthly monitoring as a requirement placed on a discharging system manufacturer who wanted to prove in the county that the company's product works and can meet the limits specified in the rule. (GC)

*Response:* This rule does not regulate the manufacturer of such systems. Rather, this rule regulates the discharge from these systems as NPDES discharges, as required under SEA 461.

*Comment:* The county is working with Purdue University and the State Department of Health to be able to predict what soils and areas are destined to have failed septic systems.

Currently, there is no predictability, and some newly installed septic systems go into immediate failure. The rule's applicability is expected to provide the option of utilizing the on-site discharging system if a newly constructed home's septic system fails. Managing the program for on-site discharging systems is going to be more difficult for the district and the county health department than managing soil absorption systems so the discharging systems will only be utilized where no other option exists. (GC)

*Response:* IDEM believes that such systems may be a valuable tool to aid homeowners with existing septic system problems. IDEM does not agree that discharging on-site wastewater treatment systems should be an option for new construction in Allen County or elsewhere in Indiana. The law was passed based on testimony that existing homes with no viable option needed this approach to continue to be able to live affordably on the property. New construction has many options, and it is our understanding that protocols for determining the acceptability of a site to conventional and other on-site wastewater systems are in place and should be used for new construction.

*Comment:* The Allen County on-site management district is one of the co-permittees under this rule, but the county also sees itself as a co-enforcement agency along with IDEM to ensure compliance of the on-site discharging system with the homeowner. The county has a stake in the success of the entire program of allowing on-site discharging systems. If monitoring costs are too great for the homeowner, problems may arise and jeopardize the whole program. (GC)

*Response:* The district may adopt its own ordinances and require homeowners to meet certain obligations. However, Allen County as a "co-permittee" is not a "co-enforcement" agency along with IDEM. IDEM retains full enforcement authority, as required under its delegation of authority from the US EPA to administer the NPDES program. IDEM will continue to work with affected parties to craft acceptable monitoring standards while balancing the cost with the important need of making sure that the effluent from these systems meets state water quality standards.

*Comment:* It is surprising to hear the county representative say that on-site discharging systems will be used only as a last resort and that, in the absence of sewers, soil absorption systems will still be the first choice despite also acknowledging that eighty percent of the county's soils are unsuitable for soil based systems. Several years ago this water board considered a request for a rulemaking to allow on-site discharging systems, and the decision at that time was not to allow those on-site treatment systems because they would be too resource intensive to regulate and assure compliance. These on-site discharging systems are very high maintenance and subject to the same failure as septic systems due to poor operation and maintenance on the part of the homeowner. (HEC)

*Response:* IDEM understands the concern raised by the commentor. Properly working systems will require effort on the part of the homeowner, the district, and IDEM to assure compliance with state water quality standards.

*Comment:* It seems no other alternative has been considered such as separating the gray water and hauling the black water or a cluster system if the homes with failed septic systems are in close proximity to each other. (HEC)

*Response:* SEA 461 requires the local health department to determine that such systems are the only option available in each case prior to an operating permit being issued. Further, SEA 461 requires the development of this rule as a NPDES general permit for such discharging disposal systems.

*Comment:* No mention has been made of the affect of these on-site discharging systems to E. coli impaired waters of the state. The water quality standards do not allow for adding

pollutants to a water body that is already impaired for that pollutant. (HEC)

*Response:* The effluent from each of these systems is required to meet state water quality standards. As these systems are new in this state, it will be important to monitor to assure no deleterious effect on the state's waters. Should a problem arise, IDEM retains the authority to require more stringent limits and management practices.

*Comment:* A Total Maximum Daily Load assessment has not been done in the Allen County area so there cannot be assurance that these on-site discharging systems won't exceed the load allocation for the receiving water body. (HEC)

*Response:* Many of these systems will not be discharging directly into a receiving water body. IDEM must be prepared to closely monitor these systems to assure that the load allocations to any receiving streams are not exceeded.

*Comment:* The section 7 rulemaking process has truncated the public participation on this rule. There have been no comments from citizens of Allen County which is a big concern since they are the people that are going to be affected. IDEM and Allen County need to do a better job of involving local citizens before the rule becomes final. (HEC)

*Response:* The section 7 process was used because SEA 461 requires the development of a NPDES general permit for these discharging disposal systems. Therefore, the policy alternatives available to IDEM in implementing that statutory mandate are extremely limited. Such is the requirement for the use of a "section 7" (IC 13-14-9-7) rulemaking, which only eliminates the first notice of rulemaking. IDEM has provided outreach materials to be distributed at public meetings held in Allen County related to the formation of the district. IDEM will continue to attempt to involve all interested parties in this rulemaking.

*Comment:* Thirty years ago federal reports from EPA stated that septic systems are a problem. Despite that knowledge, septic systems are still being installed and continuing to be even more of a problem. A program from IDEM and the state department of health is needed to control septic systems to avoid creating the problem that results in the only solution being on-site discharging systems. Most importantly, construction needs to be prohibited in areas that have no sewers and, yet, have soils that will not be suitable for septic systems. IDEM needs to assure that the Allen County on-site management district is adequately staffed to provide sufficient oversight of operation of the on-site systems. (GP)

*Response:* IDEM has no authority over the staffing requirements of the district. IDEM acknowledges that the best solution to the moraine soil issue facing Allen County is to provide sewer connections for all systems currently on septic systems. However, such a solution is not an economically viable solution in all situations. IDEM has no authority to halt construction in areas that are beyond available sewer connections.